FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 478/2005

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 28, 2007.

Heard Mrs. Jawalkar for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for perpetual injunction seeking to restrain the defendant from obstructing the plaintiff from using the suit site for ingress and egress. It was the case of the plaintiff that to the southern side of the plaintiff's house, the plaintiff had constructed a door and the defendant was trying to obstruct the plaintiff's entry through the open lane which belongs to the Government and which was used by the defendant for stationing the bullock-cart. It was further pleaded by the plaintiff that the defendant had made certain illegal construction on the southern side of the suit land and, therefore, had obstructed the plaintiff's right of enjoyment of the door on the southern side.

The defendant, vide his written statement, denied the claim of the plaintiff. According to the

defendant, plaintiff had filed the proceedings for the same cause before the Tahsildar, Risod and after the revenue authorities had dismissed the proceedings, the plaintiff had instituted the present suit.

The trial Court held that the plaintiff had proved that there was a door towards southern side of the plaintiff's house, but had failed to prove that the defendant obstructed the enjoyment of plaintiff's door by stationing the bullock-cart, cattle and buffalo, without any right. Consequently, the trial Court dismissed the suit for grant of perpetual injunction.

In an appeal filed by the plaintiff, the District Judge maintained the findings recorded by the trial Court and held that the grant of injunction in favour of the plaintiff would cause inconvenience and discomfort to the defendant. The appellate Court further held that in case injunction is granted in favour of the plaintiff, it was likely to be abused by him.

Both the Courts held that the suit land was the Government land and the plaintiff could not have claimed exclusive user of the land in question. The plaintiff had also stated in his deposition that there was a door to his house on the southern side. Even otherwise, according to the trial and the appellate Courts, the plaintiff had neither pleaded

that there was any customary or easementary right available to the plaintiff for user of the suit land, nor was any evidence tendered on the aforesaid issue. The trial and the appellate Courts came to the conclusion that the plaintiff has failed to prove as to how he had an exclusive right to use the suit site. In view of the aforesaid findings, the Courts held that the plaintiff had no right to claim injunction as prayed for.

The findings recorded by both the Courts are the findings of facts based on the evidence tendered by the parties on record, and do not give rise to any substantial question of law.

The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP